

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

CARLTON-MICHAELS CORP.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 1997-55
)	
PAX HOLDINGS, INC.,)	
)	
Defendant.)	
_____)	

APPEARANCES:

Douglas A. Brady, Esq.
Jacobs & Brady
7 Church Street
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U.S.V.I. 00822
Attorney for Plaintiff

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Attorney for Defendant

Memorandum Opinion

Finch, C. J.

Presently before the Court are Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Partial Summary Judgment.¹ For the reasons set forth below, both motions are denied.

¹ Defendant is moving for summary judgment on the contract claim.

I. Background

This matter involves an option to purchase certain real property located at Plot Nos. 58, 30, 29, and 147 Estate Carlton, St. Croix, U.S. Virgin Islands. By agreement dated February 1, 1994,² Defendant granted Plaintiff an option to purchase said property for a term of four (4) months in exchange for \$10,000.00. By the Option to Purchase Real Property (“Option Agreement”), Plaintiff was given the right to renew the option for an additional twenty (20) months, for a total option term of twenty-four (24) months. During the renewal period, the contract required Plaintiff to pay \$3,000.00 monthly. This \$3,000.00 was to be applied to the purchase price of the property at closing. The “Renewal of Option” provides in relevant part:

Buyer shall have the right to renew the option granted herein for twenty (20) consecutive calendar months (the “Renewal Period”) following the expiration of the Option term as follows: . . . (b) Buyer may exercise the right of renewal for one or more months of the Renewal Period, and may do so in one or more consecutive months, provided that the total period of Buyer’s option rights, being the Option Term and the Renewal Period, shall not exceed twenty four (24) calendar months from [February 1, 1994].

Pl.’s Mem. in Supp., Exhibit 1.

Plaintiff argues that with the allowed renewal, the option term was scheduled to expire on the last day of the month, specifically January 31, 1996. Defendant argues that with the allowed renewal, the option term was scheduled to expire on the first day of the month, specifically February 1, 1996.

By letter dated April 2, 1996, Defendant agreed to extend the option for four (4) additional months, specifically, March, April, May and June of 1996. See Pl.’s Mem. in Supp., Exhibit 3. In consideration of the extension, Plaintiff agreed to pay the increased sum of

² The Option Agreement was executed on or about April 7, 1994, but was dated and effective from February 1, 1994.

\$4,000.00 monthly, beginning March 1, 1996. By agreement this \$4,000.00 was not to be applied to the purchase price at closing.

Plaintiff argues that although not included in either the original contract or the April 2, 1996 extension, Plaintiff, by check dated February 5, 1996, paid Defendant \$3,000.00 for the additional month of February 1996. Plaintiff claims that the course of dealing between the parties and the oral assurances of Defendant reflected by the testimony of Robert Greer and John McCallum, corporate representatives of Defendant, demonstrate that the February 5, 1996 payment by Plaintiff represented an extension of the Option to Purchase for that one month of February 1996. Defendant argues that the payment did not represent any payment made or accepted for any extension beyond the original twenty-four month term. Rather, Defendant claims that the February 5, 1996 payment was for the option extension from January 1, 1996 to February 1, 1996, and that the late payment was consistent with the course of dealing between the parties.

After the April 2, 1996 extension, the parties, by undated letter, agreed to another two (2) month extension beyond the earlier four-month extension. The undated July 1996 agreement provides in relevant part: “This letter is merely to acknowledge receipt of check number 1199 dated July 2, 1996. Also to confirm our conversation extending the Estate Carlton option agreement for the two months of July and August, 1996.” Pl.’s Mem. in Supp., Exhibit 5.

Defendant argues that this brought the maximum option term to August 1, 1996, provided that Plaintiff made an additional \$4,000.00 payment for the final month of the extension.³ Plaintiff

³ Defendant argues that this extended the original twenty-four (24) month term to six (6) additional months from February 1, 1996 to August 1, 1996, and that payment was never properly tendered for the period of July 1 to August 1, 1996.

argues that this brought the maximum option term to August 31, 1996.

By letter dated July 18, 1996, Defendant informed Plaintiff that no further extensions of the Option Agreement would be granted, and that if Plaintiff desired to purchase the property it must exercise its option on or before August 1, 1996. Plaintiff argues that this letter constitutes a wrongful repudiation by Defendant of the Option to Purchase between the parties as extended, and thus a total breach on the part of Defendant, entitling Plaintiff to damages. See Restatement (Second) of Contracts, § 253(1). Defendant argues that the July 18, 1996 letter is not a wrongful repudiation but rather is consistent with the terms of the Option Agreement.

II. Analysis

A. Summary Judgment Standard

A court will grant summary judgment only if it is clear from the record “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court’s role is not “to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A dispute involving a material fact is “genuine” where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. at 248. In determining whether such genuine issues exist, the Court must resolve all reasonable doubts in favor of the nonmoving party. Christopher v. Davis Beach Co., 15 F.3d 38, 40 (3d Cir. 1994).

B. Contract Interpretation

In examining a contract, the court’s purpose is to interpret the contracting parties’ intent

as objectively manifested by them and make a preliminary inquiry as to whether the contract is ambiguous. Hullett v. Towers, Perrin, Forster & Crosby, Inc., 38 F.3d 107, 111 (3d Cir. 1994). “Language is ambiguous only when words used to express meaning and the intention of the parties are insufficient in that the contract may be understood to reach two or more possible meanings.” CAT Aircraft Leasing, Inc. v. Cessna Aircraft Co., 22 V.I. 442, 445 (D.V.I. 1986). Furthermore, if the court determines that the written terms of the contract are not ambiguous, then the court will interpret the contract as a matter of law. Hullett, 38 F.3d at 111. If, however, the court determines that the contract is ambiguous, then the interpretation of the contract is left to the fact finder to resolve the ambiguity in light of extrinsic evidence. Id.

Because the Option Agreement is a contract for the sale of land it is subject to the Statue of Frauds, 28 V.I.C. § 242. Section 242 provides that “[e]very contract . . . for the sale of any lands, or any interest in lands, shall be void unless the contract or some note or memorandum is in writing, and signed by the party to be charged, or by his lawful agent under written authority.” 28 V.I.C. § 242 (1999).⁴ Therefore, any oral assurances made by the Defendant are not admissible evidence from which the Court may determine the expiration date of the option term.

The governing law in the Virgin Islands with respect to contracts is the Restatement (Second) of Contracts. See Turbe v. Government of the Virgin Islands, 938 F.2d 427 (3d Cir. 1991).⁵ Restatement Section 202 provides in relevant part:

⁴ Any oral agreement between the parties is barred not only by the Statue of Frauds, but also by the terms of the Option Agreement itself which provides for no oral modification.

⁵ The Restatements of law are controlling law in the Virgin Islands absent local laws to the contrary. 1 V.I.C. § 4 (1995); see also Monk v. Virgin Islands Water & Power Authority, 53 F.3d 1381 (3d Cir. 1995).

§ 202 Rules in Aid of Interpretation

(2) A writing is interpreted as a whole, and all the writings that are part of the same transaction are interpreted together.

(3) Unless a different intention is manifested, (a) where language has a generally prevailing meaning, it is interpreted in accordance with that meaning . . .

Restatement (Second) of Contracts §§ 202(2) & (3) (1981).

Plaintiff argues that the term “calendar month” in the original Option Agreement and the term “month” in the subsequent writings, namely the April 2, 1996 agreement and the undated July agreement, are not susceptible to more than one reasonable interpretation and are therefore not ambiguous. Plaintiff relies on the definition of “month” as defined by Black’s Law Dictionary. Black’s Law Dictionary defines “month” as follows: The “word ‘month,’ unless otherwise defined, means ‘calendar month,’ or time from any day of any of the months as adjudged in the calendar to corresponding day, if any, if not any, to last day of next month.” Black’s Law Dictionary 1007 (6th ed. 1990).

This definition of the term “month” or “calendar month” does not necessarily mean that the term of the Option Agreement expired on the 31st of the month, contrary to Plaintiff’s assertion. Rather, this definition leaves open the possibility that the term of the Option Agreement expired on the 1st of the month as argued by Defendant. The initial Option Agreement also supports the conclusion that the term expired on the 1st of the month. As the Option Agreement provides that “the Option Term and the Renewal Period, shall not exceed twenty four (24) calendar months from [February 1, 1994].” Pl.’s Mem. in Supp., Exhibit 1. Thus, the original Option Agreement appears to define the calendar month.

On the other hand, it is also reasonable to conclude that the undated July 1996 agreement, stating that the Option Agreement was extended for the “two months of July and August, 1996,”

means that the option period was extended for the full month of August, namely until August 31, 1996. Pl.'s Mem. in Supp., Exhibit 5.

In determining the expiration date of the Option Agreement, the Court must interpret the Option Agreement itself and the two written extension agreements, read together. See Restatement (Second) of Contracts §§ 202 and 203 (1981); see also Kinek v. Paramount Communications, Inc., 22 F.3d 503, 509 (2d Cir. 1994). The Court finds that the Option Agreement, when read together with the two subsequent agreements, is ambiguous. Therefore, a genuine issue of material fact exists and summary judgment must be denied.⁶

III. Conclusion

In accordance with the attached Order, Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Partial Summary Judgment are denied.

ENTER:

DATED: December ____, 1999

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:

Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

⁶ Because there exists a genuine issue as to the expiration date of the Option agreement, whether Defendant was in anticipatory breach of that agreement and whether Plaintiff is entitled to damages are also issues for trial.

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ORDER

Presently before the Court are Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Partial Summary Judgment. For the reasons stated in the attached opinion, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment is **DENIED**. It is further

ORDERED that Defendant's Cross-Motion for Partial Summary Judgment is also **DENIED**.

ENTER:

DATED: December ____, 1999

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:

Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk